

§ 548.502

of hours worked in excess of the applicable number of hours established in section 7(a) of the Act in the work-week. However, only overtime hours under the employment agreement which also qualify as overtime hours under section 7(e) (5), (6), or (7) of the Act²⁵ may be offset against the hours of work in excess of the applicable number of hours established in section 7(a) of the Act.

[26 FR 7732, Aug. 18, 1961]

§ 548.502 Other payments.

Extra overtime compensation must be separately computed and paid on payments such as bonuses or shift differentials which are not included in the computation of the established basic rate and which would have been included in the regular rate of pay.²⁶

Example 1. An employee is paid on an hourly rate basis plus a production bonus, and also a shift differential of 10 cents for each hour worked on the second shift. The authorized basic rate under the agreement is the employee's daily average hourly earnings, and under the employment agreement he is paid one and one-half times the basic rate for all hours worked in excess of 8 each day. Suppose his production bonus is included in the computation of the basic rate, but the shift differential is not. In addition to overtime compensation computed at the basic rate the employee must be paid an extra 5 cents for each overtime hour worked on the second shift.

Example 2. A piece worker, under his employment agreement, is paid overtime compensation for daily overtime and for hours of work on Saturday based on an authorized basic rate obtained by averaging his piece work earnings for the half-month. In addition, he is paid a monthly cost-of-living bonus which is not included in the computation of the basic rate. It will be necessary for the employer to compute and pay overtime compensation separately on the bonus.²⁷

[20 FR 5683, Aug. 6, 1955]

²⁵ See §§ 778.201 through 778.207 of this chapter.

²⁶ Unless specifically excluded by agreement or understanding and prior authorization is obtained from the Administrator. See § 548.400(b).

²⁷ See § 778.209 of this chapter for an explanation of how to compute overtime on the bonus.

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PART 549—REQUIREMENTS OF A “BONA FIDE PROFIT-SHARING PLAN OR TRUST”

Sec.

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AUTHORITY: Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207.

SOURCE: 18 FR 3292, June 10, 1953, unless otherwise noted.

§ 549.0 Scope and effect of regulations.

(a) The regulations in this part set forth the requirements of a “bona fide profit-sharing plan or trust” under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (hereinafter called the Act). In determining the total remuneration for employment which section 7(e) of the Act requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide profit-sharing plan or trust meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) The inclusion or exclusion from the regular rate of contributions made by an employer pursuant to any plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees (regardless of whether the plan or trust is financed out of profits) is governed by section 7(e)(4) of the Act, the requirements of which are set forth in the Interpretative Bulletin on Overtime Compensation, part 778, of this chapter, §§ 778.214 and 778.215. However, where such a plan or trust is combined in a single program (whether in one or more documents) with a plan or trust for providing profit-sharing payments to employees, the profit-sharing payments may be excluded from the regular rate if they meet the requirements

of the regulations in this part and the contributions made by the employer for providing the benefits described in section 7(e)(4) of the Act may be excluded from the regular rate if they meet the tests set forth in the Interpretative Bulletin, part 778, of this chapter, §§ 778.214 and 778.215.

§ 549.1 Essential requirements for qualifications.

(a) A bona fide profit-sharing plan or trust for purposes of section 7(e)(3)(b) of the Act is required to meet all of the standards set forth in paragraphs (b) through (g) of this section and must not contain any of the disqualifying provisions set forth in § 549.2.

(b) The profit-sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employees, which is established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees which wages or salaries are not dependent upon or influenced by the existence of such profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(c) All contributions or allocations by the employer to the fund or trust to be distributed to the employees are:

(1) Derived solely from profits of the employer's business enterprise, establishment or plant as a whole, or an established branch or division of the business or enterprise which is recognized as such for general business purposes and for which profits are separately and regularly calculated in accordance with accepted accounting practice; and

(2) Made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(d) Eligibility to share in profits extends:

(1) At least to all employees who are subject to the minimum wage and overtime provisions of the Act, or to all such employees in an established part of the employer's business as described in paragraph (c) of this section: *Provided, however,* That such eligibility

may be determined by factors such as length of service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or

(2) To such classifications of employees as the employer may designate with the approval of the Administrator upon a finding, after notice to interested persons, including employee representatives, and an opportunity to present their views either orally or in writing, that it is in accord with the meaning and intent of the provisions of section 7(e)(3)(b) of the Act and this part. The Administrator may give such notice by requiring the employer to post a notice approved by the Administrator for a specified period in a place or places where notices to employees are customarily posted or at such other place or places designated by the Administrator, or he may require notice to be given in such other manner as he deems appropriate.

(e) The amounts paid to individual employees are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more or more of such factors as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employees, or length of service, or distribution may be made on a per capita basis.

(f) An employee's total share determined in accordance with paragraph (e) of this section may not be diminished because of any other remuneration received by him.

(g) Provision is made either for payment to the individual employees of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of his employees' distributive shares of profits with a trustee for deferred distribution to such employees of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust: *Provided, however,* That the right of an employee to receive his share is